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REMARKS/ARGUMENTS

In light of the following remarks, reexamination and reconsideration of this application, withdrawal of the rejections, and formal notification of the allowability of all claims as presented are earnestly solicited. Claims 9, 11-23, and 25-27 are currently pending. In response to the Office Action mailed June 23, 2005, Claims 9 and 18 have been amended to further clarify the subject matter being claimed. The amendments to the pending claims find support throughout the Specification and the Figures, and no new matter has been added. Accordingly, it is believed that the claims now define patentable subject matter over the prior art cited by the Examiner and notice to such effect is requested at the Examiner's earliest convenience.

Claim Rejections – 35 U.S.C. §112

Claims 9, 11-23, and 25-27 were rejected in the Office Action as being indefinite with respect to the term "fixedly positioned" in reference to the trough. In response, Claims 9 and 18 have been amended to recite that the trough is "non-movably engaged" with the top clamping member. The Applicants thus submit that this rejection has been overcome and request withdrawal of the same.

Claim Rejections – 35 U.S.C. §103

Claims 9, 11-13, 17-22, 26, and 27 were rejected in the Office Action as being unpatentable over U.S. Patent No. 3,988,052 to Mooney et al. in view of U.S. Patent No. 4,189,198 to Reichman, U.S. Patent No. 4,210,374 to Churla, and U.S. Patent No. 4,806,108 to Meinhardt, citing *In re Japikse*, 274 F.2d 669 (CCPA 1960). Claims 14 and 23 were also rejected as being unpatentable over the Mooney '052, Reichman '198, Churla '374, and Meinhardt '108 patents in further view of U.S. Patent No. 2,116,776 to Bondeson. Claims 16 and 26 were rejected as being unpatentable over the Mooney '052, Reichman '198, Churla '374, and Meinhardt '108 patents in further view of U.S. Patent No. 4,159,859 to Shemtov. In response, Claims 9 and 18, upon which Claims 11-17, 19-23, and 25-27 depend, have been

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amended to provide further clarification of the claimed subject matter. These amendments find support throughout the Specification and Drawings, and no new matter has been added.

Independent Claim 9 recites a clamping apparatus for electrically connecting at least a first ground wire to a grounding member. Such a clamping apparatus comprises a bottom clamping member comprising a bottom medial portion and first and second threaded holes on first and second sides of the bottom medial portion for accepting first and second screws, respectively, wherein the first and second threaded holes are disposed along first and second longitudinal axes, respectively. A top clamping member is discrete with respect to and cooperates with the bottom clamping member and comprises a top medial portion for cooperation with the bottom medial portion to define a grounding member axis, wherein the top clamping member comprises first and second holes on first and second sides, respectively, of the top clamping member for alignment with the first and second threaded holes of the bottom clamping member. A trough comprises a base wall and opposing first and second side walls, wherein the trough is non-movably engaged with the top clamping member opposite the bottom clamping member. The first side wall defines a threaded hole for receiving a set screw in threaded engagement therewith, wherein the threaded hole extends along a third longitudinal axis through the first side wall and toward the second side wall. The third longitudinal axis intersects at least substantially perpendicularly with at least one of the first and second longitudinal axes. The trough defines an opening between the first and second side walls for receiving a first ground wire. The opening further defines a ground wire axis parallel to the grounding member axis, whereby the first ground wire can be secured in the trough against the second side wall by the set screw.

Independent Claim 18 is directed to a clamping apparatus for electrically connecting at least a first ground wire to a grounding member. Such a clamping apparatus comprises a bottom clamping member comprising a bottom medial portion and first and second threaded holes on first and second sides of the bottom medial portion receiving first and second screws, respectively, wherein the first and second screws are disposed along first and second longitudinal axes, respectively. A top clamping member is discrete with respect to and cooperates with the

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bottom clamping member and comprises a top medial portion for cooperation with the bottom medial portion to define a grounding member axis, wherein the top clamping member comprises first and second holes on first and second sides, respectively, of the top clamping member receiving the first and second screws. A trough comprises a base wall and opposing first and second side walls, wherein the trough is non-movably engaged with the top clamping member opposite the bottom clamping member. The trough defines an opening between the first and second side walls, wherein the opening further defines a ground wire axis parallel to the grounding member axis. A threaded hole is defined by the first side wall for threadedly engaging a set screw disposed along a third longitudinal axis, with the third longitudinal axis intersecting at least one of the first and second longitudinal axes above the first or second screw.

The Mooney '052 patent discloses an electrical conduit grounding clamp device 10 having a pair of complementary upper and lower cooperating first and second clamp members 13 and 14, a pair of clamp members connecting screws 16 and 17 and a ground cable clamping screw 18. The first clamp member 13 is formed by stamping and includes a longitudinally extending flat web 19 shaped to provide a medial crown portion 15, having a horizontal flat top section 20 and side sections 21 and 22 oppositely diverging downwardly from the opposite side edges of top section 20, the side sections 21 and 22 terminating at their bottom edges in horizontal coplanar wings 23 and 24. The wing 24 has a bore formed therein engaged by the screw 17. The wing 23 has a bore formed therein engaged by screw 16, which bore meets a transversely extending arcuate slot 27 extending to the edge of web 19 through the corresponding flange 26. Formed from the side section 21 is a relatively short upwardly projecting vertical leg 29 joined to the crown top 20 by a rounded edge end having a saddle shaped top edge 30. Further, formed from the side section 22 and wing 24 is a relatively long upwardly projecting vertical leg 33 joined to the crown top 20 by a rounded edge opposite the junction thereof with leg 29. A horizontal lug or arm 34 projects toward leg 29 from the top edge of leg 33 and is joined thereto by a curved edge and is above the level of the top edge 30 of leg 29 and overlies the crown top section 20. The arm 34 has a tapped vertical bore engaged by the cable

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clamping screw 18. The confronting edges of arm 29 and leg 34 are spaced apart a distance somewhat greater than the diameter of the grounding cable 11.

The Reichman '198 patent discloses a conduit grounding wire coupling device 10 which includes a conduit coupling collar 11, a cable or wire clamp member 12 and a coupling collar clamp member assembly locking screw 13. The collar member 11 is provided on its outer peripheral surface with a plurality of regularly circumferentially spaced radially projecting shallow rectangular protuberances or projections 17 having flat outer faces 18 parallel to planes tangent to the outer face of body member 14. One or more protuberances 17 have central threaded radial bores 19 formed therein and have formed in their outer faces 18 a plurality of grooves 20 of triangular transverse cross section extending diametrically of the respective bores 19. The bores 19 function to couple a clamp member 12 to collar 11. The clamp member 12 comprises a body member 22 including a longitudinally extending rear wall having a flat planar outer face 24 and outwardly projecting upper and lower transverse arms 26 and 27 respectively, upper arm 26 being along the top of rear wall 23 and of the same width thereof and lower arm 27 being above the bottom of rear wall 23 and likewise being of the same width thereof. The section of rear wall 23 below lower arm 27 defines a tab section, the sides of the lower half of which converge downwardly. The arm 27 terminates at its outer end in a curved upwardly directed lip 29. A threaded vertical bore is centrally formed in upper arm 26 and engages the threaded shank 30 of a clamp adjusting screw 32 having a slotted hex head 33. A laterally extending horizontal upper jaw member 34 is coupled to the lower end of threaded shaft 30 so that rotation of screw 32 in one or the other direction lowers or raises upper jaw member 34 relative to the lower jaw member defining lipped arm 27 to close or open the clamp member 12 respectively. In the assembled condition, the rear face of tab section 28 is superimposed on a face 18 of a grooved protuberance 17 with the ridge 37 engaging a selected groove 20 depending on the desired orientation of clamp member 12 and the bores 19 and 36 being in coaxial alignment. **Bolt 13 carrying a washer 39 engages aligned bores 19 and 36 and is tightened to releasably rigidly lock the coupling collar 11 and clamp member 12 in the preselected or desired angular relationship.** The angular relationship between coupling collar 11 and wire

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clamp member 12 may be adjusted merely by loosening bolt 13, turning clamp member 12 to bring ridge 37 into registry with a selected groove 20 and then tightening bolt 13.

The Churla '374 patent discloses a set-screw bushing comprising a bushing body 22, for being received on a pipe, and clamping means 24 secured thereto and formed as an integral unit. The clamping means 24 comprises a c-shaped block 30 defining a mouth 32. The mouth 32 is adapted to receive an electrical conductor 38 longitudinally therein (perpendicularly to the pipe) and to clamp the conductor into place. The bottom of the mouth forms a curved seat 40 for the conductor 38. The edge of the seat is in the form of an upwardly projecting lip 42. The portion 44 of the c-shaped block disposed over the seat 40 includes a threaded opening 46 therein. A threaded lug 48 extends through the opening 46 into the mouth 32 and toward the seat 40. The free end 52 of the lug 48 is adapted to clamp the conductor between itself and seat 40 to form an electrical connection.

The Meinhardt '108 patent discloses a grounding bushing 10 comprising an annular band 11 about a central axis coinciding with the axis of a conduit on which the grounding bushing 10 is used. The bushing 10 has a plurality of raised bosses 15 positioned to the exterior of surface 13, and having upper planar surfaces 16 which incline at an angle of inclination selected to provide a tilt or inclination for easy access to set screws that thereafter mount in threaded openings 20 that are provided in each of the bosses 15. At least one of the selected ears 15 is positioned so that a grounding lug indicated at 25 can be mounted on the surface 16. The lug 25 has a bottom surface 26 that mates with surface 16 and a receptacle 27 adjacent one side thereof opening through a passageway 28 open to the front of the lug. The lug 25 has a throat portion 30 that has a passageway 31 therethrough for receiving rotatably a screw 32. The lug 25 has an overhanging lip 35 that overlies the passageway 28 and this lip 35 has a screw 36 threaded therethrough to engage and bear against a grounding wire 40 that is positioned in the receptacle 27. The screw 36 is parallel to screw 32.

The Applicants first note that the Federal Circuit has consistently stated that a finding of obviousness requires a specific teaching, motivation, or suggestion to combine the teachings of individual items of prior art. See, e.g., *In Re Sang Su Lee*, No. 00-1158 (Fed. Cir. January

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18, 2002) (factual question of motivation to combine is material to patentability and could not be resolved on subjective belief and unknown authority); *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1352 (Fed. Cir. 1998) (a showing of a suggestion, teaching, or motivation to combine is an essential evidentiary component of an obviousness holding); *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992) (Examiner can satisfy burden of obviousness in light of combination only by showing some objective teaching leading to the combination); and *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988) (evidence of teaching or suggestion essential to avoid hindsight).

MPEP §2141 explicitly states that, when "applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined"

In determining the differences between the prior art and the claims, "the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." MPEP §2141.02, "Basic Considerations Which Apply to Obviousness Rejections," *citing Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenk v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). (Emphasis added). The teaching or suggestion to make the claimed combination and reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. MPEP §2143 *citing In re Vueck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Also, "[t]he requirement "at the time the invention was made" is to avoid impermissible hindsight." MPEP §2141.01(II).

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With respect to the person of ordinary skill in the art standard applied by the Office Action, it is particularly noted that "[t]here are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." MPEP §2143.01, "The Prior Art Must Suggest the Desirability of the Claimed Invention," citing *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). In this regard, "[t]he level of skill in the art cannot be relied upon to provide the suggestion to combine references." MPEP §2143.01, "The Prior Art Must Suggest the Desirability of the Claimed Invention," citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). Furthermore, "[a] statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references." MPEP §2143.01, "Fact That the Claimed Invention is Within the Capabilities of One of Ordinary Skill in the Art is Not Sufficient by Itself to Establish *Prima Facie* Obviousness," citing *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993); *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000); and *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

First, the Applicants respectfully traverse the allegation in the Office Action that "variations in the configurations of the trough and set screw would have been a matter of engineering design choice, being a rearrangement of parts without patentable significance" (citing *In re Japikse*, 274 F.2d 669 (CCPA 1960)). In this regard, the Applicants note that *In re Japikse* is found at 181 F.2d 1019 (CCPA 1950), whereas *In re Harza* is the case that appears at the citation provided in the Office Action. The Applicants further submit that *In re Japikse* **did not** involve an assessment of patentable significance as it related to the rearrangement of parts as a matter of engineering design choice, as alleged in the Office Action. That is, *In re Japikse* involved a situation where the appellant attempted to overcome a basic reference patent cited in an obviousness rejection by alleging inoperativeness. In that case, the CCPA ruled that the

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alleged inoperativeness could be cured by an obvious matter of design and, as such, the basic reference patent could not be eliminated on the ground of inoperativeness. Therefore, on this basis, the Applicants submit that In re Japikse is not relevant to the present application since the Applicants do not seek to eliminate the Mooney '052 reference on the basis of inoperativeness, and since the present invention does not merely involve "a rearrangement of parts" associated with the configuration of the trough and set screw. With respect to the latter, the Applicants further submit that the focus of the Office Action solely on the configuration of the trough and set screw is in direct contravention to a basic tenet of patent law set forth in MPEP §2141, which explicitly states that, when "applying 35 U.S.C. 103 . . . the claimed invention must be considered as a whole." That is, the Applicants respectfully assert that, in applying the cited references to the embodiments of the present invention as now claimed in Claims 9 and 18, the claimed invention must be considered as a whole. The Applicants further note that this requirement is supported by MPEP §2141.02, which states that "the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious."

In this regard, the Mooney '052, Reichman '198, Churla '374, and Meinhardt '108 patents, when each is considered as a whole (as also required under MPEP §2141), do not teach or suggest, either individually or in combination, the claimed invention as a whole, namely, a clamping apparatus, for securing a first ground wire parallel to a grounding member, having discrete top and bottom clamping members joinable through aligned holes disposed along respective first and second axes, and a trough non-movably engaged with the top clamping member opposite the bottom clamping member, wherein a first side wall of the trough defines a threaded hole extending along a third axis through the first side wall and toward the second side wall, with the third axis intersecting at least substantially perpendicularly with at least one of the first and second longitudinal axes.

More particularly, the Mooney '052 patent discloses a stamp-formed ground clamp having opposing clamping sections, wherein one of the clamping sections includes a cable clamp, formed from the stamping, having a horizontal leg above the clamping section, wherein

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the leg includes a tapped vertical bore engaged by a cable clamping screw. As such, the Mooney '052 patent discloses a configuration whereby the "tapped vertical bore" extends parallel to the holes for securing the clamping sections together.

Further, the Reichman '198, Churla '374, and Meinhardt '108 patents each disclose a monolithic ground bushing having an associated wire clamping member. In this regard, the wire clamping member disclosed by each of the Reichman '198 and Meinhardt '108 patents is movable with respect to the respective monolithic ground bushing. In addition, the wire clamping member disclosed by the Churla '374 patent is configured such that the wire clamped therein would extend perpendicularly to the conduit on which the ground bushing is received.

The Applicants submit that the Mooney '052 patent does not teach or suggest a clamping apparatus wherein a trough is non-movably engaged with the top clamping member opposite the bottom clamping member, and wherein a first side wall of the trough defines a threaded hole extending along a third axis through the first side wall and toward the second side wall, with the third axis intersecting at least substantially perpendicularly with at least one of the first and second longitudinal axes, as now claimed in Claims 9 and 18. That is, the Mooney '052 patent clearly notes that the "tapped vertical bore" extends parallel to the holes for securing the clamping sections together.

The Applicants again note that MPEP §2143 states that "[t]he teaching or suggestion to make the claimed combination and reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In this regard, the Reichman '198 and Meinhardt '108 patents each disclose a wire clamping member that is movable with respect to a monolithic ground bushing. That is, the wire clamping member disclosed in each of the Reichman '198 and Meinhardt '108 patents is removable from the respective monolithic ground bushing and, when installed on the respective monolithic ground bushing, may be rotated into different orientations. As such, the Applicants submit that the Mooney '052, Reichman '198 and Meinhardt '108 patents do not teach or suggest applying such movable and selectively oriented wire clamping members as disclosed by the Reichman '198 and Meinhardt '108 patents to an electrical conduit grounding device as disclosed by the Mooney '052 patent. Further, the Reichman '198 and

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Meinhardt '108 patents **do not** teach or suggest how such movable and selectively oriented wire clamping members could be formed using the stamping process required by the Mooney '052 patent.

Further, the Churla '374 patent discloses a wire clamping member that is integrally formed with respect to a monolithic ground bushing in such a manner that the wire received thereby is oriented perpendicularly to the conduit on which the monolithic ground bushing is received. That is, the "side walls" defining the wire clamping member are spaced apart along the axis of the monolithic ground bushing along which the conduit is received. As such, the Applicants submit that the Mooney '052 and Churla '374 patents **do not** teach or suggest applying an integrally formed wire clamping member, configured such that the wire received thereby is oriented perpendicularly to the conduit on which the monolithic ground bushing is received, to an electrical conduit grounding device as disclosed by the Mooney '052 patent, and neither patent discloses how such a wire clamping member oriented perpendicularly to the conduit-receiving direction could be formed using the stamping process required by the Mooney '052 patent.

In addition, even if the movable and selectively oriented wire clamping members as disclosed by the Reichman '198 and Meinhardt '108 patents, or the integrally formed wire clamping member as disclosed by the Churla '374 patent, were applied to an electrical conduit grounding device as disclosed by the Mooney '052 patent, as alleged in the Office Action, the end result **would not** form an apparatus as now claimed in either of Claims 9 and 18, namely, a clamping apparatus, for securing a first ground wire parallel to a grounding member, having **discrete** top and bottom clamping members joinable through aligned holes disposed along respective first and second axes, and **a trough non-movably engaged with the top clamping member opposite the bottom clamping member**, wherein a first side wall of the trough defines **a threaded hole extending along a third axis through the first side wall and toward the second side wall, with the third axis intersecting at least substantially perpendicularly with at least one of the first and second longitudinal axes**. Thus, the Applicants further submit that there is **no teaching or suggestion** in any of the Mooney '052, Reichman '198, Churla '374, and

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Meinhardt '108 patents to make the claimed combination, and that the teachings of the Mooney '052, Reichman '198, Churla '374, and Meinhardt '108 patents **do not** provide a reasonable expectation of success for arriving at the claimed combination, both of which are required under MPEP §2143.

The Applicants also take this opportunity to reiterate that "[t]he level of skill in the art cannot be relied upon to provide the suggestion to combine references" and that "[a] statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references" (MPEP §2143.01). In this regard, the Applicants submit that the Office Action inasmuch admits that the cited Mooney '052, Reichman '198, Churla '374, and Meinhardt '108 patents **do not** teach or suggest the embodiments of the present invention as now claimed in Claims 9 and 18, namely, a clamping apparatus, for securing a first ground wire parallel to a grounding member, having **discrete** top and bottom clamping members joinable through aligned holes disposed along respective first and second axes, and a trough non-movably engaged with the top clamping member opposite the bottom clamping member, wherein a first side wall of the trough defines a threaded hole extending along a third axis through the first side wall and toward the second side wall, with the third axis intersecting at least substantially perpendicularly with at least one of the first and second longitudinal axes. In recognizing the shortcomings of the cited prior art, the level of skill in the art **cannot** then be used to provide the suggestion to combine the references, much less arrive at a combination that is not taught or suggested by any combination of the cited references.

In any instance, the Mooney '052, Reichman '198, Churla '374, and Meinhardt '108 patents, either separately or in combination, **do not teach or suggest the combination of elements** comprising the clamping apparatus as now claimed in independent Claims 9 and 18. These deficiencies of the Mooney '052, Reichman '198, Churla '374, and Meinhardt '108

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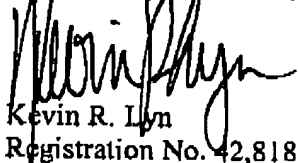
patents are also applicable with respect to the rejections of Claims 14 and 23, additionally over the Bondeson '776 patent, as well as with respect to the rejections of Claims 16 and 26, additionally over the Shemtov '859 patent, since Claims 14 and 16 depend from Claim 9, while Claims 23 and 26 depend from Claim 18. As such, the Applicants submit that Claims 9, 11-23, and 25-27 are patentable over the Mooney '052, Reichman '198, Churla '374, Meinhardt '108, Bondeson '776, and Shemtov '859 patents cited in the Office Action.

Conclusion

In summary, the Mooney '052, Reichman '198, Churla '374, Meinhardt '108, Bondeson '776, and Shemtov '859 patents do not teach, suggest, or provide motivation for the embodiments of the present invention, as now claimed in Claims 9 and 18. Accordingly, in view of these differences between the Applicants' invention and the Mooney '052, Reichman '198, Churla '374, Meinhardt '108, Bondeson '776, and Shemtov '859 patents, it is submitted that the present invention, as defined by Claims 9, 11-23, and 25-27, is patentable over the prior art cited in the Office Action. As such, for the reasons set forth above, Claims 9, 11-23, and 25-27 are believed to be in condition for immediate allowance. Accordingly, notice to such effect is respectfully requested at the Examiner's earliest opportunity.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,


Kevin R. Lyn
Registration No. 42,818

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Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Raleigh Office (919) 862-2200
Fax Raleigh Office (919) 862-2260

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